

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2950 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHIVUBHA NATHUBHA SODHA

Versus

STATE OF GUJARAT

Appearance:

MR DJ CHAUHAN for Petitioner

MR VB Gharania, AGP for the Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 23/11/98

ORAL JUDGEMENT

This petition has been filed for quashing the order of dismissal dated 13th January, 1987 passed by the District Superintendent of Police, Jamnagar and the order dated 10th June, 1987 passed by the Deputy Inspector General of Police, Saurashtra North Division, Rajkot dismissing the appeal of the petitioner and affirming the dismissal order dated 13th January, 1987 passed by the

District Superintendent of Police, Jamnagar.

2. The petitioner was appointed as an armed constable in the in the year 1979. On 3.7.85 he was deputed to work as constable in police department and he was attached in village Manpur of police station Kalyanpur, Ta: Bhanod, Dist: Jamnagar. The petitioner was charge-sheeted as follows:

"You have been put to Manpaur Taluka Bhanvad in Special Party on 3.7.85. During this, on 17.7.85 Hardas Abha had to go to Bhanvad, you were ordered to go with him for his protection with your rifle. While sitting in rickshaw by Hardas, Sindhi Alimamad Taiyad had murdered Hardas by giving knife blows and the same incident could be prevented by your rifle. But not doing so, you have committed serious negligence and shown cowardness and just to hide out that you had fired afterwards."

On this charge-sheet, an inquiry was conducted by the Deputy Superintendent of Police, Rajkot city. During the inquiry, the charge framed against the petitioner was found true and the District Superintendent of Police by the impugned order dated 13th January, 1987 awarded punishment of dismissal to the petitioner, after giving full opportunity of hearing to the petitioner. Being aggrieved by the said order, the petitioner preferred an appeal before Deputy Inspector General of Police, Saurashtra North Division, Rajkot which was also dismissed by an order dated 10th June, 1987. Hence, the petitioner has filed the present petition challenging both the said orders.

2. The learned counsel for the petitioner is unable to point out that the punishment awarded to the petitioner by the authority concerned was in violation of any statutory provisions of law or that the inquiry was conducted in violation of statutory provisions of law or against principles of law.

3. The main contention of the learned counsel for the petitioner is that the petitioner was working as a constable at the police station and he was directed by the Commander to accompany the deceased when he was going for his some personal work. At the relevant time, the petitioner had gone to ease and hence, he was not present and as soon as he came to know that the petitioner was being inflicted knife injuries by the accused, he fired shots with his rifle and he removed the deceased to the hospital for medical examination when he was alive at the relevant time. He further submitted

that the deputation of the petitioner being a single constable was in violation of the statutory provisions of Bombay Police Manual. The relevant provision reads as under:

Section VII-Escort of Prisoners and Treasury.

438. General Instructions for escort of Prisoners and Treasure

Sub-para (3) provides that Policemen when going armed on duties other than orderly duty should not go singly in any local area infested with gangs of armed outlaws.

Sub-para (4) provides that an escort party proceeding to or returning from any duty shall return together as they went, and shall not linger one behind the other on the road. Should any one of the party meet with an accident, or become ill and unable to march with the rest, the escort commander shall arrange to bring for him a conveyance or send him to the nearest hospital. No officer shall be allowed to absent himself from duty with his party."

4. The learned advocate for the petitioner also submitted that regulation 482 of the Bombay Police Act provides that if police are needed by private persons to guard their property or keep the peace, they may be supplied by Commissioner of Police or the Superintendent of Police, as the case may be, on the terms prescribed by section 22 of the Bombay Police Act; on furnishing private individuals, when proceeding on a pilgrimage or any other journey, with a Police escort is objectionable. On the basis of this, the learned counsel for the petitioner submitted that journey of the deceased was a private one and he should not have been entrusted to accompany the deceased by the Commander, at least two police constables should have been deputed and as such the duty entrusted to him was illegal and he cannot be punished for violation thereof.

5. I have perused the relevant provisions of Bombay Police Manual referred to above. But I find that those instructions are in respect of escort of prisoner and Treasury. Whenever any prisoner or treasury has to be taken from one place to another, the Superintendent of Police has been directed to depute the policemen and at that time more than one policeman is required to be deputed for that purpose and a single policeman would not be sufficient. It is not a case where prisoner was

escorted or treasury was being taken away from one place to another. Hence, those provisions of Bombay Police Manual are not attracted in the instant case.

6. I have given anxious thought to the submissions made on behalf of the petitioner. In the instant case, the petitioner was deputed on the duty to protect life of the deceased as escort by the Commander. Whether he was present at the time of the incident, then he did not protect the life of the deceased by his cowardness conduct or whether he was not present at the scene of the offence under the pretext that he had gone to answer call of nature. That also amounts to negligence on the part of the petitioner.

8. In view of the above, no ground has been made out by the learned counsel for the petitioner to call for any interference with the findings arrived at by the District Superintendent of Police in awarding punishment of dismissal from service and the appellate order affirming the same. I do not find any merit this petition calling for any interference by this Court. Accordingly, the petition lacks merits and is dismissed. Rule is discharged with no order as to costs.